

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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LENWORTH LOCKE, JR.,

Plaintiff,

- against -

CITY OF NEW YORK, P.O. DANIEL CASTALDO,  
P.O. MARC FONTANA, SUPERVISORS JOHN DOE 1-3  
(Their true names and identities presently unknown),  
Sued In Their Individual and Official Capacities,

Defendants.  
-----X

**COMPLAINT  
WITH JURY DEMAND**

Case Action No. :

16-cv-6825

Plaintiff LENWORTH LOCKE, JR., by and through his attorneys, the law office of  
AVALLONE & BELLISTRI, LLP, complaining of Defendants, alleges as follows:

1. This action is hereby commenced for the purpose of seeking to secure protection  
of, and to redress the deprivation of, rights secured and protected by the United States  
Constitution, 42 U.S.C. §§ 1983, 1985 and 1986, First, Fourth, Eighth and Fourteenth  
Amendments, and pendent claims under the constitution and laws of the State of New York and  
City of New York,

2. Additionally, this claim seeks money damages, both accrued and prospective, on  
behalf of Plaintiff and attorney's fees pursuant to 42 U.S.C. § 1988.

**JURISDICTION**

3. The jurisdiction of this Court is invoked based upon federal questions and  
pursuant to the Constitution of the United States, the New York State Constitution, 28 U.S.C. §§  
1331, 1343(3) and (4), as well as 42 U.S.C. § 2000e through § 2000e (15).

4. This Court has supplemental jurisdiction over the federal claims pursuant to 28  
U.S.C. § 1367.

5. Jurisdiction is also invoked under the doctrine of pendant jurisdiction with respect  
to any and all state claims set forth in all counts.

6. The rights, privileges and immunities sought herein to be redressed are those secured by the First, Fourth, and Eighth Amendments and by the equal protection and due process clauses of the Fourteenth Amendment of the United States Constitution, as well as provisions against race discrimination, 42 U.S.C. §§ 1981, 1983, 1985 and 1986 along with applicable provisions of the New York State Constitution, the New York State Executive Law and the New York City Human Rights Law.

### **VENUE**

7. Venue is proper within the Southern District of this Honorable Court, City of New York, State of New York, as the course of Defendants' conduct took place within the boundaries of Kings County (Brooklyn), and the instant causes of action are based upon violations of the New York State Constitution, the New York State Executive Law and the New York City Human Rights Law.

### **PARTIES**

8. Plaintiff LENWORTH LOCKE, JR. is an African-American male over twenty-one (21) years of age and a resident of Kings County, New York.

9. Defendant CITY of NEW YORK ("CITY") was and is a municipal corporation organized and existing under, and by virtue of, the laws of the State of New York, and a political subdivision of the State of New York.

10. Defendant CITY is an employer within the definitions contained in 42 U.S.C. § 2000-E, employing more than fifteen (15) employees, and is engaged in an industry affecting commerce. The CITY maintains a police department and at all relevant times employed the individual defendants as police officers for the NYPD.

11. Defendant P.O. DANIEL CASTALDO ("CASTALDO"), at all times relevant to this Complaint, was an employee of the CITY, a member of the NYPD, stationed at the 70<sup>th</sup>

Precinct located at 154 Lawrence Avenue, Brooklyn, N.Y. Defendant CASTALDO is sued in his individual and official capacities.

12. Defendant P.O. MARC FONTANA (“FONTANA”), at all times relevant to this Complaint, was an employee of the CITY, a member of the NYPD, stationed at the 70<sup>th</sup> Precinct located at 154 Lawrence Avenue, Brooklyn, N.Y. Defendant FONTANA is sued in his individual and official capacities.

### **NOTICE OF CLAIM**

13. That on or about March 22, 2016, Plaintiff (then Claimant) caused a written Notice of Claim to be served upon the Defendants, which said Notice of Claim set forth the name and post office address of Plaintiff herein, nature of the claim, the time when, the place where and the manner in which the claim herein sued upon arose and the items of damages or injuries claimed to have been sustained, so far as then practicable.

14. That a copy of the Notice of Claim filed electronically with the City is annexed hereto, made a part hereto and incorporated by reference herein. (See, Exhibit A).

15. That at least thirty days have elapsed prior to the commencement of this action since the service of the Notice of Claim as aforesaid, and payment thereof has been neglected and/or refused by the Defendants.

16. That the Defendants conducted a hearing on the claim pursuant to New York General Municipal Law section 50-h on May 23, 2016.

### **RELEVANT FACTS**

17. Upon information and belief, at all relevant times stated herein, CITY employed CASTALDO and FONTANA as police officers for the NYPD.

18. That at all relevant times herein, CITY was aware or should have been aware of CASTALDO’s and FONTANA’s propensity for violence and abuse of their authority as police officers for the NYPD.

19. That despite being aware of CASTALDO's and FONTANA's propensity for violence and abuse of their authority as police officers for the NYPD, CITY and its agents and employees failed to intercede and approved, condoned or otherwise permitted CASTALDO and FONTANA to continue in their position as NYPD police officers.

20. On or about December 27, 2013, at approximately 3:45 pm near 2201 Nostrand Avenue, Brooklyn, NY Plaintiff was manhandled, assaulted and battered by CASTALDO and FONTANA when he was physically thrown on to the hook of the police vehicle, handcuffing him in full view of numerous bystanders and falsely arrested Plaintiff for a concocted and nonexistent warrant for his arrest.

21. On or about December 27, 2013 CASTALDO and FONTANA conspired with other officers at the 70<sup>th</sup> Precinct and made false statements regarding Plaintiff regarding a false allegation that there was a warrant issued against Plaintiff. No Warrant existed at the time of Plaintiff's arrest.

22. On or about December 27, 2013 CASTALDO and FONTANA near 2201 Nostrand Avenue, Brooklyn, NY abused their authority as police officers when they unlawfully stopped the Plaintiff.

23. On or about December 27, 2013 CASTALDO and FONTANA near 2201 Nostrand Avenue, Brooklyn, NY abused their authority as police officers when they unlawfully searched the Plaintiff.

24. On or about December 27, 2013 CASTALDO and FONTANA near 2201 Nostrand Avenue, Brooklyn, NY abused their authority as police officers when they unlawfully issued a summons to the Plaintiff while in police custody.

25. On or about December 27, 2013 CASTALDO and FONTANA near 2201 Nostrand Avenue, Brooklyn, NY verbally abused Plaintiff by referring to him as "Faggot" and "Dickhead" while on the hood of the police vehicle.

25. On or about December 27, 2013 CASTALDO and FONTANA where discourtesy and subjected the Plaintiff to ridicule to in route to the 70<sup>th</sup> Precinct after they falsely arrested him for a non-existent warrant.

26. The abuse of authority by CASTALDO and FONTANA was captured on video by a bystander and witnesses by many since the incidents occurred in public view.

27. Defendant CASTALDO and FONTANA knew or should have known that the reason they gave leading to Plaintiff's arrest were false and that Plaintiff's arrest was not based upon probable cause.

28. Plaintiff was transported to the 70<sup>th</sup> Precinct by Defendants CASTALDO and FONTANA where he was processed, handcuffed and placed in a cell with other prisoners who had been arrested and charged with serious felonies.

29. After remaining in a cell for numerous hours, Plaintiff was later transported to central booking with other felons and subsequently taken to court for arraignment.

30. Plaintiff appeared before a Judge in Criminal Court, Kings County and dismissed the charges against the Plaintiff on the basis that the grounds for his arrest were unfounded and false.

31. Plaintiff filed a complaint with the NYC Civilian Complaint Review Board ("CCRB") on January 2, 2014 and an investigation was commenced.

32. On or about August 14, 2014 the CCRB substantiated Plaintiff's allegation regarding the Defendants' abuse of authority.

33. On or about March 7, 2016, Plaintiff appeared at NYPD Headquarters at 1 Police Plaza to testify against the Defendant CASTALDO and FONTANA.

34. On March 7, 2016, upon information and belief, Defendants CASTALDO and FONTANA were found guilty at a departmental hearing regarding the Plaintiff's false arrest.

35. That Defendant CITY's agents, employees and supervisors from the NYPD all had an opportunity to prevent the false arrest of the Plaintiff and violated his civil rights, but all neglected to do so.

36. That Defendant CITY's NYPD and Police Supervisors were made aware, by witnesses statements and video at the time of Plaintiff's arrest and continuously thereafter, that the charges filed by CASTALDO and FONTANA were false and entirely baseless.

37. Plaintiff was unlawfully stopped and frisked, arrested and maliciously prosecuted solely because of his race.

38. Defendant CITY by its agents and employees has failed to intercede to remove Defendants CASTALDO and FONTANA from the NYPD and rather have covered-up their misconduct, abuse of authority and violent tendencies.

39. The abuse of authority and assault of the Plaintiff by CASTALDO and FONTANA could have been prevented had they been properly trained and supervised.

40. The conduct of the Defendants towards Plaintiff, as set forth above, was without cause or justification, constituted assault and battery on the person of the Plaintiff by Defendants.

41. This conduct was intentionally, recklessly and negligently directed at Plaintiff by the Defendant CITY, through the actions of Defendants CASTALDO and FONTANA, employees, agents and/or servants, acting individually and within the scope of their employment with the NYPD.

42. Plaintiff has been damaged and suffered serve bodily injury, emotional distress, mental anguish, embarrassment and humiliation, damage to reputation and conscious pain and suffering as a result of the intentional and negligent conduct by Defendants.

**AS AND FOR A FIRST CLAIM PURSUANT TO  
42 U.S.C. § 1983 FOR EQUAL PROTECTION VIOLATIONS  
AGAINST ALL INDIVIDUAL DEFENDANTS**

43. The Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs "1" through "42" with the same force and effect as if fully set forth herein.

44. Throughout the events recited herein, the individual Defendants, while acting under the color of law, subjected the Plaintiff to the deprivation of rights, privileges and immunities secured by the Constitution and laws of the United States, and specifically the Equal Protection and Due Process guarantees of the Fourteenth Amendment of the Constitution, and Freedom of Speech pursuant to the First and Fifth Amendments of the Constitution.

45. Plaintiff has been deprived of her right to procedural due process in that she was denied a position to which she was constitutionally entitled to under the Collective Bargaining Agreement.

46. Plaintiff was denied Equal Protection in that he is a member of a protected class, he suffered adverse actions by and the actions of Defendants occurred under conditions giving rise to an inference of discrimination.

47. Plaintiff's First Amendment right to free speech was violated by Defendants in retaliation for complaints Plaintiff made, and Defendants retaliatory actions would deter similarly situated individuals of ordinary firmness from exercising his constitutional rights.

48. Plaintiff has been deprived of his Constitutional Rights to be free of abuse of authority based upon his race and has been damaged and suffered emotional distress, economic damages and conscious pain and suffering as a result of these actions.

49. The actions of Defendants, in depriving Plaintiff of his constitutional and civil rights, as hereinbefore stated, were willful and malicious acts.

50. In addition to Plaintiff, upon information and belief, Defendants have similarly violated the rights of other black males, all as part of a deliberate policy and practice and a deliberate course of conduct.

51. As a result of the aforesaid wrongful, reckless and intentional acts of the Defendants, the Plaintiff has been damaged in the amount of ONE MILLION DOLLARS (\$1,000,000.00).

52. Based on the foregoing, Plaintiff is entitled to punitive and exemplary damages in the sum of ONE MILLION DOLLARS (\$1,000,000.00).

**AS AND FOR A SECOND CLAIM PURSUANT TO  
42 U.S.C. § 1983 FOR CONSPIRACY VIOLATIONS  
AGAINST ALL INDIVIDUAL DEFENDANTS**

53. The Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs "1" through "52" with the same force and effect as if fully set forth herein.

54. Defendants, acting under color of federal and state law, conspired with one another and the district attorney's office to deprive Plaintiff of his constitutional rights, including the rights to be free from intentional use of unreasonable force, to not be subjected to cruel and unusual punishment, and by fabricating and contriving purported misconduct by Plaintiff in order to attempt to justify Defendants' actions.



55. As part of the conspiracy, the Defendants did, without cause or justification, among other acts, physically assaulted and batter Plaintiff by throwing him on to the hood of their police vehicle and placing handcuffs on him in full view of pedestrians and witnesses, falsely arrest Plaintiff, maliciously prosecute Plaintiff, subject Plaintiff to excessive and unjust force, stop and frisk, and in furtherance of the conspiracy and in order to cover up their wrongful acts, Defendants engaged in the following conduct intentionally, carelessly, negligently, wrongfully and recklessly:

- a. Falsely arresting and imprisoning Plaintiff;
- b. Fabricating and contriving criminal charges lodged against Plaintiff and thereafter maliciously prosecuting Plaintiff;
- c. Fabricating and contriving stories about Plaintiff;
- d. Violating Plaintiff's rights, privileges and immunities as guarantees under the United States Constitution, under 42 USC §1983 and under the constitution and laws of State of New York.

56. As a result of the aforesaid wrongful, reckless and intentional acts of the Defendants, the Plaintiff has been damaged in the amount of ONE MILLION DOLLARS (\$1,000,000.00).

57. Based on the foregoing, Plaintiff is entitled to punitive and exemplary damages in the sum of ONE MILLION DOLLARS (\$1,000,000.00).

**AS AND FOR A THIRD CLAIM PURSUANT TO  
42 U.S.C. § 1983 FOR STOP AND SEARCH/FRISK  
VIOLATIONS AGAINST ALL INDIVIDUAL DEFENDANTS**

58. The Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs "1" through "57" with the same force and effect as if fully set forth herein.

59. Defendants, acting under color of federal and state law, deprive Plaintiff of his constitutional rights, including the rights to be free from excessive and unreasonable stop and search with no rational relation to a legitimate penological purpose when Defendants had no reasonable suspicion or rational reason to justify a stop and frisk/search and conducting the search in a deliberately humiliating manner by subjecting Plaintiff to a stop and frisk in full view of other pedestrians while being forcibly arrested on the hood of the police car.



60. The Individual Defendants intentionally and recklessly violated the Plaintiff's rights to privacy and to be free from unreasonable searches, in violation of his rights under the Fourth Amendment to the United States Constitution.

61. The CITY and members of the NYPD were grossly negligent and/or deliberately indifferent in their supervision of NYPD employees who subjected the Plaintiff to the unlawful stop and search.

62. By creating and approving the policy and practice under which the Plaintiff was subjected to the stop and search/frisk CITY and the Individual Defendants intentionally or recklessly violated Plaintiff's right to be free from unlawful abuse of authority under the Due Process Clause of the Fifth Amendment and Equal Protection Clause to the United States Constitution.

63. As a result of Defendants' unlawful conduct, Plaintiff has suffered psychological injury, emotional distress, humiliation, embarrassment, and monetary damages.

64. As a result of the aforesaid wrongful, reckless and intentional acts of the Defendants, the Plaintiff has been damaged in the amount of ONE MILLION DOLLARS (\$1,000,000.00).

65. Based on the foregoing, Plaintiff is entitled to punitive and exemplary damages in the sum of ONE MILLION DOLLARS (\$1,000,000.00).

**AS AND FOR A FOURTH CLAIM PURSUANT TO  
42 U.S.C. § 1983 FOR UNREASONABLE AND EXCESSIVE FORCE  
VIOLATIONS AGAINST ALL INDIVIDUAL DEFENDANTS**

66. The Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs "1" through "65" with the same force and effect as if fully set forth herein.

67. Defendants, acting under color of law, federal and state, deprived Plaintiff of his constitutional rights to be free from excessive and unreasonable force.

68. The conduct of the Defendants towards Plaintiff constituted assault and battery upon the Plaintiff by Defendants.

69. This conduct was intentionally, recklessly and negligently directed at Plaintiff by Defendants, acting individually and within the scope of their employment with the CITY and the NYPD and under color of law.

70. The aforementioned occurrence was caused by the wrongful, careless, reckless, negligent and intentional acts of Defendants. Such conduct violated the Plaintiff's rights, privileges and immunities as guaranteed by the First, Fourth, and Fourteenth Amendments of the U.S. Constitution, under 42 USC §1983 and under the laws and constitution of the State of New York.

71. As a result of Defendants' unlawful conduct, Plaintiff has suffered psychological injury, emotional distress, humiliation, embarrassment, and monetary damages.

72. As a result of the aforesaid wrongful, reckless and intentional acts of the Defendants, the Plaintiff has been damaged in the amount of ONE MILLION DOLLARS (\$1,000,000.00).

73. Based on the foregoing, Plaintiff is entitled to punitive and exemplary damages in the sum of ONE MILLION DOLLARS (\$1,000,000.00).

**AS AND FOR A FIFTH CLAIM PURSUANT TO  
42 U.S.C. § 1983 FOR FALSE ARREST, FALSE IMPRISONMENT  
AND MALICIOUS PROSECUTION AGAINST ALL INDIVIDUAL DEFENDANTS**

74. The Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs "1" through "73" with the same force and effect as if fully set forth herein.

75. Defendants, acting under color of law, federal and state, deprived Plaintiff of his constitutional rights to be free from false arrest, false imprisonment and malicious prosecution.

76. As a result of Defendants' unlawful conduct, Plaintiff has suffered psychological injury, emotional distress, humiliation, embarrassment, and monetary damages.

77. As a result of the aforesaid wrongful, reckless and intentional acts of the Defendants, the Plaintiff has been damaged in the amount of ONE MILLION DOLLARS (\$1,000,000.00).

78. Based on the foregoing, Plaintiff is entitled to punitive and exemplary damages in the sum of ONE MILLION DOLLARS (\$1,000,000.00).

**AS AND FOR A SIXTH CLAIM PURSUANT TO  
42 U.S.C. § 1983 FOR SUPERVISORY LIABILITY AND FAILURE  
TO INTERCEDE AGAINST ALL INDIVIDUAL DEFENDANTS**

79. The Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs "1" through "78" with the same force and effect as if fully set forth herein.

80. The Supervisory Defendants who oversee and supervise the conduct of the police officers employed by the NYPD, including Defendants CASTALDO and FONTANA, by their conduct under color of law, federal and state, had opportunities to intercede on behalf of the Plaintiff to prevent his false arrest, excessive use of force and unreasonable continued seizure upon Plaintiff, but due to their intentional and deliberate indifference, declined or refused to do so, and failed to properly supervise the subordinate officers in their charge.

81. As a result of Defendants' unlawful conduct, Plaintiff has suffered psychological injury, emotional distress, humiliation, embarrassment, and monetary damages.

82. As a result of the aforesaid wrongful, reckless and intentional acts of the Defendants, the Plaintiff has been damaged in the amount of ONE MILLION DOLLARS (\$1,000,000.00).

83. Based on the foregoing, Plaintiff is entitled to punitive and exemplary damages in the sum of ONE MILLION DOLLARS (\$1,000,000.00).

**AS AND FOR A SEVENTH CLAIM PURSUANT TO  
RESPONDEAT SUPERIOR**

84. The Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs "1" through "83" with the same force and effect as if fully set forth herein.

85. At all relevant times, Defendants were acting for, upon and in furtherance of the business of their employer the CITY and the NYPD and within the scope of their employment.

86. Consequently, the CITY is liable under the doctrine of respondeat superior for their tortious actions.

87. As a result of Defendants' unlawful conduct, Plaintiff has suffered psychological injury, emotional distress, humiliation, embarrassment, and monetary damages.

88. As a result of the aforesaid wrongful, reckless and intentional acts of the Defendants, the Plaintiff has been damaged in the amount of ONE MILLION DOLLARS (\$1,000,000.00).

**AS AND FOR AN EIGHTH CLAIM PURSUANT TO  
NEGLIGENT HIRING AND SUPERVISION**

89. The Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs "1" through "88" with the same force and effect as if fully set forth herein.

90. At the time of the incident described herein, the Defendants CASTALDO and FONTANA were in the employ and acting as agents for Defendant CITY.

91. Defendants CASTALDO and FONTANA had been hired and trained by defendant CITY for the position of Police Officer.

92. As employees and agents of the CITY, Defendants CASTALDO and FONTANA were at all relevant times under the supervision of their Supervisors from the NYPD and the CITY.

93. On information and belief, Defendant CITY hired and trained Defendants CASTALDO and FONTANA with disregard for their propensities for violent and abusive activity toward and disregard of the civil rights of individuals, as evidenced by the actions set forth herein.

94. On information and belief, Defendant CASTALDO and FONTANA had propensities for violent and abusive activity toward and disregard of the civil rights of individuals, as evidenced by the actions set forth herein.

95. On information and belief, Defendant CITY and its agency the NYPD, including, but not limited to Defendant Supervisors “John Doe 1-3” had propensities for failing to intervene, as required by law, when a member of the public is having his rights violated by members of their own ranks, as evidenced by other incidents known to Defendant CITY.

96. Defendant CITY and the NYPD breached their duty to the public and the Plaintiff specifically by either intentionally or negligently hiring Defendants CASTALDO and FONTANA and Supervisors “John Doe 1-3” who possessed of such propensities for illegal activity, violence abuse and disregard of civil rights.

97. Defendant CITY and its agency the NYPD breached their duty to the public and Plaintiff specifically by deploying Defendants CASTALDO and FONTANA and Supervisors “John Doe 1-3” without first properly screening the hiring of and training of them.

98. Defendant CITY and its agency the NYPD breached their duty to the public and Plaintiff specifically by failing to properly supervise Defendants CASTALDO and FONTANA and Supervisors “John Doe 1-3”, and in retaining employees despite knowledge of and

exhibition of abusive and violent propensities and disregard for civil rights of the public and individuals in their custody.

99. As a result of Defendants' unlawful conduct, Plaintiff has suffered psychological injury, emotional distress, humiliation, embarrassment, and monetary damages.

100. As a result of the aforesaid wrongful, reckless and intentional acts of the Defendants, the Plaintiff has been damaged in the amount of ONE MILLION DOLLARS (\$1,000,000.00).

### **JURY TRIAL**

101. Plaintiff demands a trial by jury on all issues in this action that are so triable.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff prays that this honorable Court grant the following relief:


1. Declare that the aforementioned actions of Defendants were unconstitutional and in violation of the United States Constitution, the New York State Constitution and New York City Human Rights Law and Administrative Code, along with all applicable statutes;
2. Declare that the aforementioned discriminatory actions of Defendants were in violation of 42 U.S.C. § 1983, New York State Executive Law § 296, et seq. and the New York City Human Rights Law, N.Y.C. Administrative Code §§ 8-107, et seq.;
3. As and for Plaintiff's First Claim, grant Plaintiff the sum of \$1,000,000.00;
4. As and for Plaintiff's Second Claim, grant Plaintiff the sum of \$1,000,000.00;
5. As and for Plaintiff's Third Claim, grant Plaintiff the sum of \$1,000,000.00;
6. As and for Plaintiff's Fourth Claim, grant Plaintiff the sum of \$1,000,000.00;
7. As and for Plaintiff's Fifth Claim, grant Plaintiff the sum of \$1,000,000.00;
8. As and for Plaintiff's Sixth Claim, grant Plaintiff the sum of \$1,000,000.00;
9. As and for Plaintiff's Seventh Claim, grant Plaintiff the sum of \$1,000,000.00;
10. As and for Plaintiff's Eighth Claim, grant Plaintiff the sum of \$1,000,000.00;
11. Grant Plaintiff all costs for this action, including reasonable attorney's fees; and

12. Grant Plaintiff such other and further relief as this Court may deem just and proper.

Dated: December 3, 2016  
Lake Success, New York

Yours, etc.,

AVALLONE & BELLISTRI, LLP  
Attorneys for Plaintiff

BY:   
ROCCO G. AVALLONE, ESQ  
3000 Marcus Avenue, Suite 3E07  
Lake Success, New York 11042  
516-986-2500